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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY
DOCKET NO. MER-L- 2521-05

PETER C. HARVEY, Attorney General of the
State of New Jersey, KIMBERLY S. RICKETTS,
Director of the New Jersey Division of Consumer
Affairs, and LOUIS E. GREENLEAF,
Superintendent of the State of New Jersey, Office
of Weights and Measures,

Plaintiffs,

v.

MOTIVA ENTERPRISES, LLC d/b/a LAKE
HIAWATHA SHELL, PARSIPPANY SHELL,
WAYNE SHELL, ABSECON SERVICE
STATION, INC. d/b/a ABSECON SHELL, PS&J
CUSTOM AUTO, LLC d/b/a PINE BROOK
SHELL, ROCKAWAY ROUTE 46 GAS, INC.
d/b/a ROCKAWAY SHELL, JANE AND JOHN
DOES 1-20, individually and as officers, directors,
shareholders, founders, owners, agents, servants
and/or employees of MOTIVA ENTERPRISES,
LLC, ABSECON SERVICE STATION, INC.,
PS&J CUSTOM AUTO, LLC and/or
ROCKAWAY ROUTE 46 GAS, INC. and
XYZ CORPORATIONS, 1-20,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, Kimberly S. Ricketts, Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, and Louis E. Greenleaf, Superintendent of the New Jersey Office of Weights and Measures, with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of this Complaint state:

PARTIES AND JURISDICTION

1. The Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA and the regulations promulgated thereunder on behalf of the Attorney General.

2. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures ("Office of Weights and Measures") in the Department of Law and Public Safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1.

3. The Superintendent of the Office of Weights and Measures ("Superintendent") is charged with the responsibility of administering the Weights and Measures Act, N.J.S.A. 51:1-1 et seq. and all regulations promulgated thereunder. Pursuant to N.J.S.A. 56:6-4.1, the Superintendent may recover penalties for violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq. and the regulations promulgated thereunder, N.J.A.C. 18:19-1.1 et seq.

4. By this action, the Attorney General, Director and Superintendent (collectively referred to as "Plaintiffs") seek injunctive and other relief for violations of the CFA and/or the Motor Fuels Act. Plaintiffs bring this action pursuant to their authority under the CFA and/or the Motor Fuels Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:6-4.1. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which the cause of action arose and/or in which some of the defendants have conducted business and/or maintained principal offices to conduct business.

5. Defendant Motiva Enterprises, LLC ("Motiva Shell") is a Delaware corporation established on July 23, 1998. Upon information and belief, at all relevant times, Motiva Shell has maintained its principal place of business at 700 Milam Street, Houston, Texas 77002. Upon information and belief, Motiva Shell is a joint venture of Shell Corporation and Saudi Aramco.

6. Motiva Shell's registered agent in the State of New Jersey (the "State") is Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

7. Upon information and belief, at all relevant times, Motiva Shell has owned and/or operated gasoline service stations within the State which include the following: (a) Lake Hiawatha Shell, 420 North Beverwyck Road, Lake Hiawatha, New Jersey 07034; (b) Parsippany Shell, 3503 Route 46 East, Parsippany, New Jersey 07054; and (c) Wayne Shell, 60 Riverview Drive, Wayne, New Jersey 07470.

8. Defendant Absecon Service Station, Inc. ("Absecon Shell") is a corporation established in the State on May 15, 2002. Upon information and belief, at all relevant times, Absecon Shell has maintained its principal place of business at 136 Broadway, Woodcliff Lake, New Jersey 07677.

9. Upon information and belief, the registered agent in the State for Absecon Shell is Michael L. Franzese, who maintains a mailing address of 136 Broadway, Woodcliff Lake, New Jersey 07677.

10. Defendant PS&J Custom Auto, LLC ("Pine Brook Shell") is a corporation established in the State on January 29, 2003. Upon information and belief, at all relevant times, Pine Brook Shell has maintained its principal place of business at 287 Changebridge Road, Pine Brook, New Jersey 07058.

11. Upon information and belief, the registered agent in the State for Pine Brook Shell is Paul Wolfman, who maintains a mailing address of 26 Emmett Avenue, Morristown, New Jersey 07960.

12. Defendant Rockaway Route 46 Gas, Inc. ("Rockaway Shell") is a corporation established in the State on December 12, 2003. Upon information and belief, at all relevant times, Rockaway Shell has maintained its principal place of business at 197 Route 46, Rockaway, New Jersey 07866.

13. Upon information and belief, the registered agent in the State for Rockaway Shell is Uzeyir Sahin, who maintains a mailing address of 197 Route 46, Rockaway, New Jersey 07866.

14. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives and/or independent contractors of Motiva Shell, Absecon Shell, Pine Brook Shell and Rockaway Shell who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

15. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

16. Motiva Shell, Absecon Shell, Pine Brook Shell and Rockaway Shell are collectively referred to as the "Defendants".

GENERAL ALLEGATIONS

17. At all relevant times, Motiva Shell has been engaged in the distribution of motor fuels to service stations in the State and elsewhere. Upon information and belief, the motor fuels comprised four (4) grades: Regular, Mid-Grade, V-Power (or Premium) and Diesel.

18. Upon information and belief, at all relevant times, Motiva Shell has owned and/or operated gasoline service stations within the State.

19. Upon information and belief, the service stations owned and /or operated by Motiva Shell include the following locations: (a) Lake Hiawatha Shell, 420 North Beverwyck Road, Lake Hiawatha, New Jersey 07034; (b) Parsippany Shell, 3503 Route 46 East, Parsippany, New Jersey 07054; and (c) Wayne Shell, 60 Riverview Drive, Wayne, New Jersey 07470.

20. Upon information and belief, at all relevant times, independently owned and/or operated service stations in the State market, advertise, solicit and otherwise offer for sale "Shell" motor fuel to consumers in the State and elsewhere.

21. Upon information and belief, at all relevant times, the independently owned and/or operated service stations have included Absecon Shell, Pine Brook Shell and Rockaway Shell.

COUNT I

VIOLATIONS OF THE MOTOR FUELS ACT BY DEFENDANTS MOTIVA SHELL, PINE BROOK SHELL AND ROCKAWAY SHELL (MULTIPLE PRICE CHANGES WITHIN 24 HOURS)

22. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 21 above as if more fully set forth herein.

23. The Motor Fuels Act, N.J.S.A. 56:6-1 et seq. governs the sale of motor fuels by retail dealers within the State.

24. To the extent it is engaged in the operation of service stations in the State, Motiva Shell is a "retail dealer" within the definition of N.J.S.A. 56:6-1.

25. Pine Brook Shell and Rockaway Shell are "retail dealers" within the definition of N.J.S.A. 56:6-1.

26. The Motor Fuels Act provides in pertinent part:

(a) Every retail dealer shall publicly display and maintain, in the manner regulated by the Director of the Division of Taxation, a sign stating the price per gallon if sold by the gallon, and per gallon and per liter if sold by the liter of the motor fuel sold by the dealer. All taxes, State and Federal, imposed with respect to the manufacture or sale of motor fuel shall be included in the price shown on said sign, but said sign shall contain a statement of the amount of taxes included in said price, or without specifying the amount thereof, said sign shall state that taxes are included in said price. A retail dealer shall not sell at any other price than the price, including tax, so posted. Any such price when posted shall remain posted and in effect for a period of not less than twenty-four (24) hours.

[N.J.S.A. 56:6-2(a) (emphasis added).]

27. Upon information and belief, at least from August 31, 2005 through September 1, 2005, Motiva Shell increased the price for Regular, Mid-Grade and V-Power grades of motor fuel sold at Lake Hiawatha Shell more than once within a twenty-four hour (24) hour period.

28. Upon information and belief, at least from August 30, 2005 through September 1, 2005, Motiva Shell increased the price for all four (4) grades of motor fuel sold at the Parsippany Shell more than once within a twenty-four (24) hour period.

29. Upon information and belief, at least on August 31, 2005, Pine Brook Shell increased the price for Regular, Mid-Grade and Premium grades of motor fuel more than once within a twenty-four hour (24) hour period.

30. Upon information and belief, at least from August 31, 2005 through September 1, 2005, Rockaway Shell increased the price for Regular, Mid-Grade and V-Power grades of motor fuel sold more than once within a twenty-four hour (24) hour period.

31. The conduct of Motiva Shell, Pine Brook Shell and Rockaway Shell constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq.

COUNT II

VIOLATIONS OF THE MOTOR FUELS ACT AND MOTOR FUELS REGULATIONS BY DEFENDANT MOTIVA SHELL (FAILURE TO MAINTAIN BOOKS AND RECORDS)

32. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 31 above as if more fully set forth herein.

33. The Motor Fuels Act, N.J.S.A. 56:6-12, further requires that retail dealers maintain records and provides, in pertinent part:

Every retail dealer shall keep such records as may be prescribed by orders, rules or regulations of the director and as may be necessary to the determination of whether or not such retail dealer has observed the provisions of this act. All such records shall be safely preserved for a period of four years in such manner as to insure their security and accessibility for inspection by the director or any employee of the Division of Taxation engaged in the administration of this act. . . .

34. The Motor Fuels Regulations specify the records to be maintained by the retail dealers, as follows:

(a) Every retail dealer must keep records as described in this section and as are necessary to the determination of whether or not such retail dealer has observed the provisions of this chapter.

[N.J.A.C. 18:19-4.1(a).]

35. On or about September 4, 2005, Motiva Shell did not maintain all of the requisite records for Lake Hiawatha Shell.

36. The conduct of Motiva Shell constitutes a violation of the Motor Fuels Act, N.J.S.A. 56:6-12 and the Motor Fuels Regulations, N.J.A.C. 18:19-4.1.

COUNT III

VIOLATIONS OF THE MOTOR FUELS ACT AND MOTOR FUELS REGULATIONS BY DEFENDANTS MOTIVA SHELL AND ABSECON SHELL (FAILURE TO PROVIDE ACCESS TO BOOKS AND RECORDS)

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above as if more fully set forth herein.

38. The Motor Fuels Act, N.J.S.A. 56:6-7, further requires that retail dealers provide access to their books and records as follows:

For the purpose of administering this act, the commissioner whenever he deems it expedient, may make or cause to be made by any employees of the State Tax Department engaged in the administration of this act an audit, examination or investigation of the books, records, papers, vouchers, accounts and documents of any retail dealer. It shall be the duty of every retail dealer, his agents or employees, to exhibit to the commissioner or to any such employee of the State Tax Department all such books, records, papers, vouchers, accounts and documents of the retail dealer and to facilitate any such audit, examination or investigation so far as it may be in his or their power to do so.

39. The Motor Fuels Regulations, N.J.A.C. 18:19-5.2, similarly require that retail dealers make available their books and records and that they facilitate any such audit, examination or investigation.

40. On or about September 4, 2005, Motiva Shell failed to provide inspectors of the State Office of Weights and Measures with access to all of the books and records of Wayne Shell.

41. On or about September 5, 2005, Absecon Shell failed to provide inspectors from the State Office of Weights and Measures with access to all of their books and records.

42. The conduct of Motiva Shell and Absecon Shell constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-7, and the Motor Fuels Regulations, N.J.A.C. 18:19-5.2.

COUNT IV

VIOLATIONS OF THE CFA BY DEFENDANTS MOTIVA SHELL, PINE BROOK SHELL AND ROCKAWAY SHELL (UNCONSCIONABLE COMMERCIAL PRACTICES)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42 above as if more fully set forth herein.

44. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . .

45. At all relevant times, Motiva Shell, Pine Brook Shell and Rockaway Shell have been engaged in the retail sale of motor fuels at service stations within the State.

46. In so doing, Shell, Motiva Shell, Pine Brook Shell and Rockaway Shell have engaged in the use of unconscionable commercial practices.

47. The conduct of Motiva Shell, Pine Brook Shell and Rockaway Shell in violation of the CFA includes, but is not limited to, the following:

- a. Selling motor fuel at a price that was increased more than once within a twenty-four (24) hour period; and
- b. Charging consumers for motor fuel sold at an unlawful price.

48. Each unconscionable commercial practice by Motiva Shell, Pine Brook Shell and Rockaway Shell constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., and the Motor Fuels Regulations, N.J.A.C. 18:19-1.1 et seq.,
- (b) Permanently enjoining Defendants and their officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., and the Motor Fuels Regulations, N.J.A.C. 18:19-1.1 et seq., including, but not limited to the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Defendants to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (d) Assessing the maximum statutory civil penalties against Defendants for each and every violation of the Motor Fuels Act, in accordance with N.J.S.A. 56:6-3 and the Motor Fuels Act Regulations, in accordance with N.J.A.C. 18:19-3.1.
- (e) Assessing the maximum statutory civil penalties against Defendants for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13 and N.J.S.A. 56:8-18;
- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendants for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: September 26, 2005
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and the accompanying regulations, is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendants, but have no direct information that any such actions involve the above-referenced allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: September 26, 2005
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Jeffrey Koziar is hereby designated as trial counsel for this matter.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: September 26, 2005
Newark, New Jersey